



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0501; FRL9699-3]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Forest County Potawatomi Community Reservation Class**

I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving procedures for permitting certain sources in relation to the Forest County Potawatomi Community (FCP Community) Class I Area into the Wisconsin State Implementation Plan (SIP). These provisions were submitted by the Wisconsin Department of Natural Resources (WDNR) on May 12, 2011. The provisions include the regulation of certain sources constructing near the FCP Community Class I Area, as well as procedures for the FCP Community's demonstration regarding a source that may have an adverse impact on the Class I Area. The provisions implement portions of a Memorandum of Agreement (MOA) entered into by Wisconsin and the FCP Community as part of a dispute resolution related to the Class I Area redesignation.

DATES: This final rule is effective on [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2011-0501. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353-8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8781, marcus.danny@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is Being Addressed by This Document?
- II. What Sections of Wisconsin's Rules Are We Approving?
- III. What Comments Did We Receive on the Proposed Rule?
- IV. What Action Is EPA Taking?
- V. Statutory and Executive Order Reviews.

I. What Is Being Addressed by This Document?

On April 5, 2012, at 77 FR 20575, EPA proposed to approve regulatory revisions that Wisconsin submitted for EPA's approval which include defining the geographic center of the FCP Community Class I Area for purposes of air quality management; provisions which require proposed new major sources or major modifications of existing sources locating within 22.25 miles of the geographic center of the FCP Community Class I Area to conduct a Class I increment analysis; and provisions which would require proposed new major sources or major modifications of existing sources locating outside 22.25 miles of the geographic center of the FCP Community Class I Area to conduct a Class II increment analysis. The rules also include procedures for the FCP Community to coordinate with the State regarding comments on sources potentially impacting the Class I Area and to make a

demonstration to the State that a proposed source may have an adverse effect on Air Quality Related Values (AQRVs). Finally, the rules provide the FCP Community with the opportunity to review certain best available control technology (BACT) and maximum achievable control technology (MACT) determinations made by the State, and provide a dispute resolution mechanism for resolving disagreements regarding those BACT or MACT determinations.

The changes to the Wisconsin SIP implement portions of an MOA signed by Wisconsin and the FCP Community in 1999. This MOA was part of a dispute resolution process related to the FCP Community Class I Area redesignation in 2008. For additional background information on the Class I Area redesignation, see 73 FR 23086, April 29, 2008, and 77 FR 20575, April 5, 2012.

II. What Sections of Wisconsin's Rules Are We Approving?

EPA is approving revisions to chapters NR 400, 405, and 406 of the Wisconsin Administration Code into the Wisconsin SIP. Specifically, we are approving NR 400.02(66m), 405.19 and 406.08(4). The revisions include adding a definition for the geographic center of the FCP Community, as well as establishing the distance from this center point at which a major source or major modification would be required to comply with regulations regarding impacts to the Class I Area, including a Class I

increment analysis and consumption limits. Additionally, the provisions establish procedures for the FCP Community to have opportunities to review BACT and MACT determinations and to demonstrate that impacts from a new source would have an adverse impact on AQRV's of the FCP Community Class I Area.

III. What Comments Did We Receive on the Proposed Rule?

EPA provided a 30-day review and comment period. The comment period closed on May 7, 2012. EPA received comments in support of the proposed approval from the FCP Community. EPA received no adverse comments on the proposed rule.

IV. What Action Is EPA Taking?

In today's action, EPA is approving NR 400.02(66m), 405.19 and 406.08(4) into the Wisconsin SIP relating to permitting for certain sources with the potential to impact the FCP Community Class I Area. As explained above, and at 77 FR 20575, the provisions will affect permitting for those sources constructing within a certain distance to the FCP Community as well as any source with the potential to have an adverse impact on the increment or AQRVs associated with the FCP Community's Class I Area. This action does not affect any permitting within the FCP Community's reservation and EPA remains the federal permitting authority for the FCP Community's reservation.

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. In May 2011, EPA issued its policy on consultation and coordination with Indian tribes. EPA explained that its policy is to consult on a government-to-government basis with

Federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Accordingly, EPA engaged in consultation with the FCP Community regarding the Wisconsin proposed SIP revisions. This process is further described in 77 FR 20575, 20577.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 27, 2012.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52-- [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY - Wisconsin

2. Section 52.2570 is amended by adding paragraph (c) (125) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(125) On May 12, 2011, the Wisconsin Department of Natural Resources submitted a request to revise the State Implementation Plan regarding procedures for permitting certain sources in relation to the Forest County Potawatomi Community Class I Area.

(i) Incorporation by reference. The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(66m) "Forest County Potawatomi Community Class I area" or "FCPC Class I area" as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

(B) NR 405.19 Forest County Potawatomi Class I area, as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

(C) NR 406.08 Action on permit applications. NR 406.08(4)(a) and (4)(b) as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

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[FR Doc. 2012-19138 Filed 08/06/2012 at 8:45 am; Publication Date: 08/07/2012]